STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 15, 2013
v	No. 310543 Kent Circuit Court
EDWARD RICHARD ELLIOTT, Defendant-Appellant.	LC No. 10-007393-FH

Before: WHITBECK, P.J., and OWENS and M. J. KELLY, JJ.

PER CURIAM.

Defendant, Edward Richard Elliot, appeals as of right his convictions of two counts of third-degree criminal sexual conduct (CSC III)[1] and one count of fourth-degree criminal sexual conduct (CSC IV)[2] following a jury trial. The trial court sentenced Elliott as a second-offense habitual offender[3] to serve terms of 50 to 264 months' imprisonment for each of the CSC III convictions and 37 days' imprisonment for the CSC IV conviction. We affirm.

I. FACTS

Elliott suffers from a learning disability. The complainant, who is Elliott's adult daughter, alleged that Elliott touched her breasts, digitally penetrated her, and performed cunnilingus on her against her will on two occasions while she was staying the night at Elliott's house. The complainant reported the assault to the police.

According to Detective Pete Kemme, he went to Elliott's home several times to attempt to speak with him and, when he was unable to find Elliott, he left his business card there. When Elliott called him, Detective Kemme invited Elliott to come to the police station for an interview. Elliott agreed and went to the police station with his girlfriend.

[1] MCL 750.520d(1)(d).

[2] MCL 750.520e(1)(d).

[3] MCL 769.10.

Detective Kemme testified that he did not read Elliott his *Miranda*[4] warnings before the interview, but he did inform Elliott that he was not under arrest. During the interview, Elliott said that he wanted to "own up" to his mistake and confessed to the assaults, but stated that the complainant did not ask him to stop.

Michelle Hill conducted a psychological evaluation of Elliott before the trial, and she testified that he had impaired attention and concentration, and intellectually functioned in the low average range. Hill testified that Elliott exhibited a good memory, social judgment, concept formation, and abstract thinking. Hill testified that, in her opinion, Elliott had "the intellectual capacity to understand the wrongfulness of his behavior."

The jury found Elliott guilty of two counts of CSC III and one count of CSC IV.

II. CUSTODIAL INTERROGATION

A. STANDARD OF REVIEW

We review for clear error the trial court's factual findings concerning the circumstances surrounding a defendant's confession, and review de novo the trial court's legal conclusions.[5] The trial court's findings are clearly erroneous if, after we have reviewed the entire record, we are definitely and firmly convinced that it made a mistake.[6]

B. LEGAL STANDARDS

Miranda warnings exist to protect a defendant's privilege against compelled self-incrimination under the United States and Michigan Constitutions.[7] Under *Miranda*, the prosecution may not use any statements that a defendant made during a custodial interrogation unless the defendant waived his or her privilege against self-incrimination.[8]

"Custodial interrogation" means "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his [or her] freedom of action in any significant way."[9] Thus, a defendant is only entitled to *Miranda* warnings when he or she is

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[4] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[5] *People v Coomer*, 245 Mich App 206, 219; 627 NW2d 612 (2001).

[6] *Id.*

[7] *People v Tierney*, 266 Mich App 687, 707; 703 NW2d 204 (2005).

[8] *Miranda*, 384 US at 444.

[9] *Id.*

in custody.[10] A defendant is in custody if, considering the totality of the circumstances, the defendant reasonably believed that he or she is not free to leave.[11]

C. APPLYING THE STANDARDS

Elliott contends his confession was inadmissible because he was in custody when he confessed, but Detective Kemme had not given him *Miranda* warnings. We disagree.

An interview is not coercive simply because it took place in a police station.[12] In *People v Mendez*, the defendant responded to the police's request for an interview, drove himself to the interview, was left alone and unrestrained while in the interview room, and was allowed to leave after.[13] This Court concluded that the trial court clearly erred when it found that the defendant was in custody under those circumstances.[14]

Here, Elliott called the police and agreed to Detective Kemme's request for an interview. Elliott and his girlfriend drove to the interview. Detective Kemme could not remember whether he told Elliott that he was free to leave, but at the beginning of the interview, Detective Kemme informed Elliott that he was not under arrest. Though Elliott suffered from a learning disability, his intelligence was in the low average range, and he was able to exhibit good memory, social judgment, concept formation, and abstract thinking. The interview lasted for about half an hour. Detective Kemme testified that he closed the door for privacy, but he did not lock it, and there is no indication that Elliott was restrained during the interview. Detective Kemme allowed Elliott to leave after the interview. Under these circumstances, we are not convinced that the trial court made a mistake when it determined that Elliott was not in custody when he confessed.

To the extent that Elliott asserts that the trial court abused its discretion by failing to review the tape of Elliott's confession before admitting it, he has failed to provide any authority for his assertion. A party may not simply announce a position on appeal, and expect this Court to discover and rationalize a basis for his or her claims.[15] We conclude that Elliott has abandoned this additional argument.

We affirm.

/s/ William C. Whitbeck
/s/ Donald S. Owens
/s/ Michael J. Kelly

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[10] *People v Hill*, 429 Mich 382, 391; 415 NW2d 193 (1987).

[11] *People v Mendez*, 225 Mich App 381, 382-383; 571 NW2d 528 (1997).

[12] *Id*. at 384; see *Oregon v Mathiason*, 429 US 492, 495; 97 S Ct 711; 50 L Ed 2d 714 (1977).

[13] *Mendez*, 225 Mich App at 383-384.

[14] *Id*. at 84.

[15] *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004).